



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0741]

RIN 1625-AA00

Safety Zone; Wando Terminal Crane Movement; Charleston, SC.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone in the Port of Charleston, SC around the vessel ZHEN HUA 28. This temporary safety zone is necessary to provide for the safety of waterway users and the M/V ZHEN HUA 28 during the vessel's transit into the Port of Charleston, its stay at Columbus Street Terminal, and its transit to, and stay at, Wando Terminal. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Charleston.

DATES: This rule is effective on October 16, 2019 through October 28, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0741 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, email Chad.L.Ray@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical. We must establish this safety zone by October 16, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule because the details of the event were not provided to the Coast Guard until September 27, 2019. It is also contrary to the public interest as it would delay the planning and implementation of safety measures necessary to protect the public and mariners from the hazards associated with the transit of the M/V ZHEN HUA 28.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with the transit of the M/V ZHEN HUA 28.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Charleston has determined that potential hazards associated with navigation and dockside operations of the M/V ZHEN HUA 28 starting October 16, 2019, will be a safety concern for anyone within a 100-yard radius of the M/V ZHEN HUA 28. Due to the size of the cranes aboard the vessel and the vessel's limited ability to maneuver, this rule is necessary to protect persons and vessels within the safety zone.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone upon the arrival of the vessel ZHEN HUA 28 in the Charleston Harbor on October 16, 2019 through October 28, 2019, encompassing all navigable waters from the surface to the sea floor within a 100-yard radius of the M/V ZHEN HUA 28 while the vessel is underway, moored, or anchored in the Sector Charleston Captain of the Port (COTP) Zone. No vessel or person is permitted to enter the safety zone without first obtaining permission from the COTP or a designated representative. Sector Charleston may be contacted on VHF-FM radio channel 16 or via telephone at (843) 740-7050.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs

through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the zone is limited to a 100-yard radius – the minimum size necessary to provide adequate protection for personnel and vessels in the area. The temporary safety zone is limited in duration as it will only be in place while the vessel is transiting, moored or anchored within the Sector Charleston COTP Zone. Once the vessel departs the Sector Charleston COTP Zone, the rule will no longer be enforced.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that will prohibit entry within a 100-yard radius of the vessel, M/V ZHEN HUA 28, during the vessel's transit, mooring and anchoring in the Sector Charleston COTP Zone. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0741 to read as follows:

§ 165.T07-0741 Safety Zone; Wando Terminal Crane Movement; Charleston, SC.

(a) **Regulated area.** The following regulated area is a moving safety zone: all waters of the Charleston Harbor, Cooper River, and Wando River in Charleston, SC within a 100-yard radius around the outer most points of the M/V ZHEN HUA 28 while the vessel is underway, moored or anchored.

(b) **Definition.** As used in this section, “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP

Charleston in the enforcement of the regulated areas.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the safety zone, contact the COTP or the COTP's designated representative by telephone at (843)740-7050 or on VHF-FM radio channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletin, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement periods. This section is effective beginning upon the arrival of the vessel ZHEN HUA 28 in the Charleston Harbor on October 16, 2019, through October 28, 2019. This rule will be enforced while M/V ZHEN HUA 28 is underway, moored, or anchored in the Sector Charleston Captain of the Port Zone.

Dated: October 10, 2019.

J. W. Reed,
Captain, U.S. Coast Guard,
Captain of the Port Charleston.

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